



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

June 13, 1952

Hon. Karl Cayton
District Attorney
Lamesa, Texas

Opinion No. V-1460

Re: Retention and disposition
by the district attorney
of a ten per cent commis-
sion on a collection made
in a State hospital patient
board and treatment case.

Dear Sir:

You have requested an opinion concerning the authority of the district attorney to retain fees and commissions for performing duties provided in Article 3232a, V.C.S.

Section 11 of Article 3232a, V.C.S., provides:

"Indigent public patients shall be supported entirely at the expense of the State. Non-indigent public patients shall be kept and maintained at the expense of the State as in the first instance; but in such cases the State shall have the right to be reimbursed for the support, maintenance and treatment of such non-indigent patients and the claim of the State for such support, maintenance and treatment shall constitute a valid lien against property of such patient, or in case he has a guardian, against the estate, or against the person or persons who may be legally liable for his support, maintenance and treatment and financially able to contribute thereto; and such claim may be collected by suit or other procedures, in the name of this State, by the county or district attorney of the county from which said patient is sent, or in case of the refusal or inability of both to act, the Attorney General shall represent the State against such patient, his guardian, or the person or persons liable for his support, maintenance and treatment, as the case may be; such suit or proceeding to be instituted upon the written request of the State Board of Control, accompanied by

the certificate of the superintendent of the hospital as to the amount due the State, which shall in no case exceed the sum set by the Board of Control. In all such suits or proceedings, the certificate of the superintendent shall be sufficient evidence of the amount due the State for the support of such patient. The county or district attorney representing the State shall be entitled to a commission of ten per cent (10%) of the amount collected. All money so collected, less such commission, shall be, by said attorney, paid to the hospital, which shall receive and receipt for the same and shall use the same for the maintenance and improvement of said hospital." (Emphasis added.)

Section 61 of Article XVI of the Constitution of Texas provides in part:

"All fees earned by district, county and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, provided that fees incurred by the State, county and any municipality, or in case where a pauper's oath is filed, shall be paid into the county treasury when collected and provided that where any officer is compensated wholly on a fee basis such fees may be retained by such officer or paid into the treasury of the county as the Commissioners Court may direct. . . ."

By virtue of the above-quoted constitutional provision the district attorney is required to pay into the county treasury all fees collected by his office in performance of his duties. Therefore, it is our opinion that the ten per cent commission prescribed in Section 11 of Article 3232a, V.C.S., for representing the State in the collection of claims due the State for the support, maintenance and treatment of non-indigent public patients cannot be retained by the district attorney and must be paid into the officers' salary fund as required by Section 61 of Article XVI of the Constitution of Texas.

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SUMMARY

The fees and commissions prescribed in Section 11 of Article 3232a, V.C.S., for representing the State in the collection of claims due the State for the support, maintenance and treatment of non-indigent public patients cannot be retained by the district attorney and must be paid into the officers' salary fund as required by Section 61 of Article XVI of the Constitution of Texas.

Yours very truly,

APPROVED:

J. C. Davis, Jr.
County Affairs Division

Mary K. Wall
Reviewing Assistant

Charles D. Mathews
First Assistant

JR:mh

PRICE DANIEL
Attorney General

By *John Reeves*
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